

MINUTES  
BOARD OF APPEALS  
VILLAGE OF SEA CLIFF  
VILLAGE HALL  
300 SEA CLIFF AVENUE  
SEA CLIFF, NEW YORK 11579

December 19, 2011

Present: Chair Kevin McGilloway  
Members Dina Epstein (arrived late)  
Noel Griffin  
Ted Kopczynski  
Jamie Weil  
Superintendent  
of Buildings Andrew Lawrence  
Village Attorney Brian Stolar



The meeting was called to order at 8:00 pm.

The Board opened the public hearing on the application of Lawrence Maier, 49 Adams Street, Sea Cliff, New York to erect a pergola on top of an existing raised deck platform in a front yard, which requires variances of the following Village Code sections: (a) 138-413.1 to permit an encroachment into the height-setback area, and (b) 138-416(A) as no accessory structure is permitted in a front yard. Premises are designated as Section 21, Block 177, Lot 431 on the Nassau County Land and Tax Map. The applicant did not appear at the hearing, but the Board acknowledged receipt and review of the application documents. The Board closed the public hearing, and reserved decision.

The Board opened the public hearing on the application of Barbara Topalian and Christian Berntsen to construct a new residence, which requires variances of the following Village Code sections: (a) 138-404 to maintain a lot area of 4,800 square feet of lot area each, where a minimum lot area of 7,500

square feet is required; (b) 138-408 to (i) maintain an accessory structure (garage) with a setback of 9.7 feet, and (ii) construct a dwelling with a setback of 16 feet, where the minimum required setback is 20 feet; (c) 138-411 to maintain a side yard setback of 3.3 feet, where the minimum required setback is 10 feet; (d) 138-413.1 to construct a dwelling which encroaches into the height/setback ratio plane; and (e) 138-416 to maintain an accessory structure in a front yard where no such accessory structure is permitted. Premises are designated as Section 21, Block 154, Lots 561 and 562 on the Nassau County Land and Tax Map. The applicant was represented by Kathleen Deegan Dickson, Esq. Many residents expressed their concerns about the development of the property as proposed. Member Epstein arrived at the meeting during this public hearing. The Board closed the public hearing, and reserved decision.

The Board discussed the Topalian application. Ms. Epstein did not participate in the discussion. After such discussion, on motion duly made by Mr. Weil, seconded by Mr. Kopczynski, and adopted three votes in favor and Mr. Griffin opposed (Ms. Epstein abstained), the Board directed Board counsel to prepare a draft determination denying the application.

The Board discussed the environmental impacts of the Maier application. Ms. Epstein did not participate in the discussion. After such discussion, on motion duly made by Mr. Griffin, seconded by the Chair, and adopted four votes in favor and Ms. Epstein abstaining, the Board determined that the action was a Type II matter under SEQRA, and required no further environmental review.

After further discussion of the Maier application, on motion duly made by Mr. Griffin, seconded by the Chair, and adopted unanimously, the Board granted the application in accordance with the decision annexed hereto.

The Board discussed the application of Steven Grapstein. At the Board's November 15, 2011 meeting, the Board closed the public hearing, but left the record open to permit the applicant to submit additional documentation as referred to during the presentation on November 15, 2011. The Board noted that the information submitted by the applicant did not appear to match the proposal. The Board determined to not render a determination on the application until the applicant submitted plans consistent with the application presented on November 15, 2011.

The Board discussed the Schidlovsky application. Mr. Weil did not participate in the discussion. On motion duly made by Ms. Epstein, seconded by the Chair, and adopted four votes in favor and Mr. Weil abstaining, the Board granted the application in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 11:05 pm.



## **MAIER SHORT FORM DECISION**

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on December 19, 2011, on motion duly made by Mr. Griffin, seconded by the Chair, and adopted four votes in favor, and Ms. Epstein abstaining, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

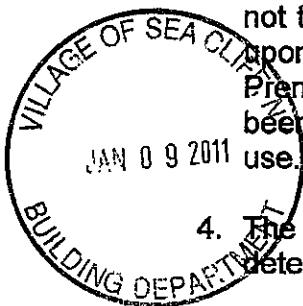
1. Lawrence Maier, 49 Adams Street, Sea Cliff, New York applied to erect a pergola on top of an existing raised deck platform in a front yard, which requires variances of the following Village Code sections: (a) 138-413.1 to permit an encroachment into the height-setback area, and (b) 138-416(A) as no accessory structure is permitted in a front yard. Premises are designated as Section 21, Block 177, Lot 431 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the construction is in compliance with the plans submitted with the application and all requirements of the building department; and (b) the work is performed and any required building permit or certificate is obtained within the timeframes provided in Village Code §138-1304.



## SCHIDLOVSKY DECISION

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on December 19, 2011, on motion of Ms. Epstein, seconded by the Chair, and adopted four votes in favor and Mr. Weil abstaining, the Board, having duly considered the matters brought forth at the public hearing, and other matters properly within the consideration of this Board and having discussed the subject application, rendered the following determination:

1. The applicant George Schidlovsky, 242 Sea Cliff Avenue, Sea Cliff applied to open a restaurant which requires (a) a special permit pursuant to Village Code §§138-802 and 803, and (b) variances of the following sections of the Village Code (i) 138-805 to maintain a lot area of 2,920 square feet, where a minimum of 4,000 square feet is required; (ii) 138-808 to maintain no front yard setback, where a minimum of 3 feet is required; (iii) 138-811 to maintain an existing side yard setback of 2.85 feet, where the minimum required setback is 10 feet; (iv) 138-1002 to permit maintenance of no off-street parking spaces, where 18 are required; (v) 138-1004 to permit maintenance of no loading spaces. Premises are designated as Section 21, Block 131, Lot 6 on the Nassau County Land and Tax Map (the "Subject Premises").
2. The Subject Premises are located in a Business A Zoning District, and are improved presently with a first floor unit that was occupied previously by a restaurant called Roots. Roots recently vacated the Subject Premises, and the applicant seeks to utilize the restaurant portion of the Subject Premises in the same manner as Roots. The applicant proposes to refurbish the restaurant in accordance with the plans submitted with this application.
3. On February 24, 2009, the Board granted identical relief to Roots in accordance with a decision filed with the Village Clerk on March 4, 2009. As part of that application, the applicant sought to utilize the area in the front of the restaurant for 4 outdoor seasonal seats. That application was granted subject to certain conditions. One of the conditions was that the special permit be granted for a period not to exceed three (3) years and that such term can be extended upon application to the Board. Roots occupied the Subject Premises pursuant to that special permit, and the Board has not been made aware of any complaints relating to that occupancy and use.
4. The Board held public hearings on this application, made a determination of no environmental significance, and timely referred



the application to the Nassau County Planning Commission as required by law.

5. At the hearings, the applicant testified to the following:
  - a. The proposed restaurant is intended to be used as a sit down restaurant. There will be 30 seats at tables and 7 seats at the bar. The outdoor seating area will not increase the number of seats available for use by patrons.
  - b. The proposed restaurant will be open from 4pm through 12am for dinner service on Wednesdays through Saturdays and Mondays. On Sundays, the restaurant will be open from 12pm through 12am for brunch, lunch and dinner service. The seasonal outdoor seating will be used only until 10pm. The bar may remain open until 2am on open days.
  - c. There will be no mechanical ventilation in the outdoor seating area.
  - d. The applicant proposes to provide live music in accordance with a cabaret license that will be subject to review by the Board of Trustees.
  - e. The restaurant is located on Sea Cliff Avenue in the heart of the Village's Business A Zoning District.
  - f. The outdoor seating is proposed to be utilized seasonally, and is located wholly within the property boundaries and not extending into the right-of-way of Sea Cliff Avenue.
  - g. The proposed cooking equipment will be utilized in such a manner that it will not impact either the residents in the apartments above the restaurant or the nearby residents.
  - h. The cooking exhaust system and all cooking and fire sprinkler systems shall fully comply with applicable laws and municipal agency and department regulations.
  - i. No food or drink service area will be provided outdoors.
6. As to the variance for parking spaces, the Board previously approved the identical parking variance in the February 2009 determination, and the Board has not been made aware of any parking related problems in the vicinity of the restaurant. As there are no changes proposed to the restaurant use of the Subject Premises, the Board acknowledges its prior grant and that there has been no change in circumstance that would necessitate a different determination.
7. As a matter of law, special permits allow specific uses in a given district, provided that the applicant can demonstrate that it meets or complies with certain standards set forth in the zoning regulations related to such use and that the proposed use will not be a

detriment to the neighborhood. As set forth below, the Board grants the special permit subject to certain conditions.

8. In connection with the granting of a special permit, the Board has the power to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and which are not inconsistent with the provisions of the zoning regulations.
9. With regard to the parking variance, Village Code §138-1008 provides that where the required off-street parking spaces cannot be located on the same lot with the use served, a variance may be granted by the Board to the extent that the applicant can provide the required number of spaces within 500 feet of the premises or the applicant can lease the required number of spaces from other property owners within 500 feet of the lot (as long as those spaces are available to the applicant during the times of operation of the use). A variance still may be granted even if the applicant is unable to demonstrate either of the above so long as the applicant agrees to pay to the Village an amount of money equal to the cost of construction of the number of spaces the applicant is required to provide. This cost is to be computed in accordance with the amounts most recently set by resolution of the Board of Trustees.
10. As there are no spaces available on-site and the applicant has not been able to demonstrate that other spaces may be available on other sites within 500 feet, to obtain a parking variance for 18 spaces. To the extent that such payment has been made in the past for those spaces, no additional payment would be due. However, if no such payment has been made, a payment for the 18 spaces is required to be made to the Village.
11. The Board hereby grants the parking variance as the Board notes that the premises have been used as a restaurant for many years without any known complaints or incidents related to parking, the premises are located in the main downtown area of the Village's Business A zoning district, the premises would not be usable for any purpose without substantial renovations, many people will not travel to the establishment by automobile, and there are parking spaces otherwise available in the immediate vicinity of the premises. The Board utilized these factors and considerations in determining that the benefit to the applicant if the parking variances are granted outweighed any perceived detriment to the neighborhood. As the premises are located in the center of the downtown business district along Sea Cliff Avenue and there are a number of available parking spaces in the immediate vicinity, there

will not be an undesirable change in the neighborhood. The Board is familiar with the immediate neighborhood and recognizes that parking is available, especially in the evenings. The Board also recognizes that Sea Cliff Avenue is readily accessible for patrons walking to the premises, and as with the prior use as a restaurant, the Board finds that many patrons will walk to the premises. As there is expected to be sufficient parking to accommodate the 18 potential vehicles, the proposed parking variance is neither substantial nor will it have an adverse impact on the physical or environmental conditions in the neighborhood. While the Board does find that the difficulty is self-created, this factor alone is insufficient to reach a different result when comparing the benefit sought against the detriment to the neighborhood.

12. The authority of this Board to grant the variance for parking is limited by law and the provisions of the Zoning Code. Since the applicant is unable to satisfy the provisions of section 138-1008(A)(1) or (2), the authority of this Board to grant a variance is conditioned upon the applicant complying with the provisions of section 138-1008(A)(3) (if payment has not previously been made for all, or any portion, of those required parking spaces). Accordingly, subject to compliance with section 138-1008(A)(3), including payment of the fee, if required, and the conditions set forth below, the Board grants a variance of Village Code §§138-1001 and 1002. The sums due are to be paid no later than 30 days after this decision is filed with the Village Clerk and no later than issuance of a certificate of occupancy by the building department. To fully satisfy this requirement, the applicant must file a letter with the Village Clerk acknowledging its consent to this condition and agreeing to pay the required sum for 6 parking spaces.
13. The Board also grants the variance to permit the restaurant to operate without a loading space (section 138-1004). No loading space is available on the site, and subject to the conditions below, the Board finds that the benefit to the applicant to use the premises for restaurant purposes outweighs any detriment to the neighborhood. The Board has considered the five underlying factors, including substantiality, feasibility and overall impact of this variance on the neighborhood, and finds that as long as deliveries are accomplished during the timeframes imposed and in a manner that does not interfere with traffic on the adjoining roadways, the lack of an on-site loading space has no detriment on the neighborhood.
14. As to the lot area of the premises (138-805), no change is being proposed. As the use proposed is identical to prior uses of the



premises, and there is no feasible way to increase the size of the lot, the Board grants the variance from the height provisions in the Village Code.

15. As to the alteration of a non-conforming building, the Board grants the variance. Technically, the only alteration that would apply is the provision of outdoor seating, but that "alteration" was part of the 2009 approval. Thus, for the reasons identified in the parking analysis above, the Board grants the variance of section 138-1102.
16. The applicant's request for a special permit to operate a restaurant at premises where a restaurant has been in operation for many years is also granted on the conditions set forth below. To balance the potential adverse impacts the proposed use may have on nearby properties and traffic in the area with the obligation of this Board to issue a special permit where adequate, reasonable, and appropriate conditions and restrictions can be imposed to minimize the adverse effects, the special permit is granted to operate the portion of the Subject Premises depicted in the plans submitted with the application as a restaurant subject to the following conditions:
  - a. The special permit is granted to the applicant only or to any business or entity in which the applicant has a controlling interest;
  - b. The parking of vehicles by patrons of the premises, employees, or suppliers, and the loading or unloading of equipment and supplies, shall not interfere with the normal flow of traffic on the adjoining streets;
  - c. There shall be no outside storage of supplies, equipment, materials or any other items used in connection with the restaurant, except in the walk-in refrigerator;
  - d. Exterior lighting of the premises shall be designed so as to minimize any impact on the adjoining properties through shielding, directional lighting and reduction of glare and reflection. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines. There shall be no additional lighting for outdoor usage, except for table candlelight;
  - e. The applicant shall comply with the conditions imposed in connection with the granting of the parking variance application, including submitting the required letter and paying the fee required for the parking spaces (if not paid previously);

- f. Seating shall be limited to the proposed seating, including 30 seats at inside tables, 7 seats at the bar, with no more than 4 outdoor seats to be used for seasonal dining. If additional seating is necessary, applicant must reapply to the Board for appropriate relief as then identified by the Superintendent of Buildings;
- g. The cooking equipment shall be limited to the equipment proposed by the applicant;
- h. No deliveries shall be made by tractor trailer sized vehicles. No trucks in excess of 24 feet in length shall make any deliveries to or pick-ups from, the property. No deliveries or shipments shall be made to or from the property before 7:00 am or after 6:00 pm on any day;
- i. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the cooking of food, the use of the cooking and cleaning equipment proposed to be used on-site and any required modifications to the septic or water systems;
- j. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;
- k. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;
- l. No noise, fumes, or similar sources of nuisance are to emanate in a manner as to be unreasonably annoying to surrounding property owners;
- m. Except as provided elsewhere in this decision, there shall not be any outside seating on the Subject Premises without additional application to this Board;
- n. The hours of operation for the kitchen and restaurant service shall be Wednesdays, Thursdays, Fridays, Saturdays and Mondays from 4pm to 12am and Sundays from 12pm to 12am. The restaurant shall be closed on Tuesdays. The bar may remain open until 2am on the days that the restaurant is open, but the doors shall remain closed during such operation except for ingress and egress purposes or emergency purposes;
- o. Interior music shall be limited as provided in any properly issued cabaret license to prerecorded background type music and shall not include any live music. No music shall be permitted outside, and the doors and/or windows shall not

be left open in a manner that would circumvent this restriction;

- p. Outdoor seating and use of the outside area shall be limited to no later than 10:00 pm. All tables and chairs shall be removed from the outside area by 10:15pm and shall not be placed outside prior to opening of the restaurant on the next business day;
- q. No heating or cooking apparatus related to food preparation and no bar shall be located outside, including any bar for the service or storage of alcoholic or non-alcoholic beverages.
- r. All plantings and planted areas shall be maintained in good and neat condition to accomplish the purposes intended, and shall be replaced as necessary to maintain the screening and planted areas in a manner that serves as a buffer area for the residential properties on Summit Avenue;
- s. The Subject Premises shall not be used for any use that intensifies or increases the usage or the parking requirements or the potential impacts of the premises without further application to the Board;
- t. Loitering outside of the restaurant is prohibited;
- u. No mechanical means of ventilation, heating or cooling shall be utilized for the outdoor seating area;
- v. No trash or debris from the restaurant shall be stored outside unless placed in fully enclosed and sealed garbage disposal receptacles. Such receptacles shall be sanitized in a manner so as not to permit odors to emanate outside such receptacles. No such receptacles shall be visible from any public way;
- w. No employees or customers shall be permitted to smoke in the outside seating area of the premises, and as otherwise permitted under any applicable law related to smoking;
- x. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all special use permit conditions and requirements contained herein; and
- y. Because of the potential of abuse which the proposed special permit use presents if not supervised correctly and the resultant adverse impacts on the surrounding property owners and the Village and its residents that could result, this Board, mindful of its responsibilities to protect nearby residents from over commercialization of the area and other potential adverse impacts and the limited ability of the applicant and/or operator to completely control the adverse impact which the business may generate, will grant the special permit to operate as proposed for a period of one (1) year commencing on the date that this decision is filed with

the Village Clerk. The special permit shall be limited to the operation of a restaurant by the applicant, and any change in ownership shall require a new application to this Board for a special permit. To extend the special permit, prior to the expiration of the one (1) year period, but in no event sooner than four months prior to said date, the applicant, if it desires to continue the use of the premises in the manner proposed by the application, shall reapply to the Board having jurisdiction for a renewal of the special permit. The application shall be made in a timely manner so as to permit this Board to render its decision prior to the expiration of the aforesaid one (1) year time period. The provisions of this paragraph shall constitute a condition of this decision.

17. If one or more of the aforesaid conditions of this decision are violated, the Village shall have the right to suspend or revoke the special permit in accordance with the procedures set forth in the Village Code.

18. Except as otherwise provided herein, the provisions of Village Code §§138-1304 and 1403 apply.

